



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MEDTRONIC, INC.
710 MEDTRONIC PARKWAY NE
MINNEAPOLIS MN 55432-9924

COPY MAILED

SEP 21 2007

OFFICE OF PETITIONS

In re Application of
Clague et al.
Application No. 10/826,994
Filed: April 19, 2004
Attorney Docket No. P-21018.00

: DECISION ON PETITIONS
: UNDER 37 CFR 1.78(a)(3) AND (a)(6)

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed August 6, 2007, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petition under 37 CFR 1.78(a)(3) is **DISMISSED** as inappropriate.

The petition under 37 CFR 1.78(a)(6) is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

With respect to the petition under 37 CFR 1.78(a)(3), the reference has been reviewed and determined to be improper. 35 U.S.C 120 permits an applicant to claim the benefit of the earlier filing date of a prior-filed nonprovisional application. In this case, the instant application was filed on July 29, 2004. Both the amendment and Office records support a conclusion that the referenced application no. 11/047,026 was filed on January 31, 2005, and thus, is a later-filed application. As such 35 U.S.C. 120 and 37 CFR 1.78 do not apply.

With respect to the petition under 1.78(a)(6), the petition does not comply with item (1). This pending nonprovisional application was filed on April 19, 2004, within twelve months of the filing date of the prior-filed provisional application, Application No. 60/548,438, which was filed on February 27, 2004 and for which priority is claimed. A reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title. However, given the improper reference to the later filed application, the amendment is not acceptable as drafted.

Before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition and either a signed Supplemental Application Data Sheet or a substitute amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matters are required.

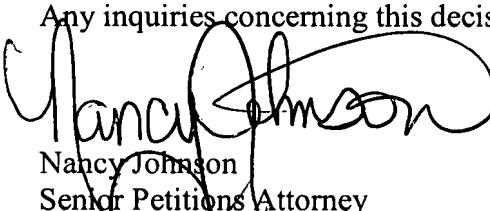
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Any inquiries concerning this decision may be directed to Charlema Grant at (571) 272-3215.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions